

Office of Government Ethics

§2610.201

be awarded at a rate higher than \$125.00 per hour in some or all of the types of proceedings covered by this part. The Office will conduct any rulemaking proceedings for this purpose under the informal rulemaking procedures of the Administrative Procedure Act, 5 U.S.C. 553.

(b) Any person may file with the Office a petition for rulemaking to increase the maximum rate for attorney or agent fees as provided in 5 U.S.C. 504(b)(1)(A)(ii). The petition should identify the rate the petitioner believes the Office should establish and the types of proceedings in which the rate should be used. It should also explain fully the reasons why the higher rate is warranted. The Office will respond to the petition within 60 days after it is filed, by initiating a rulemaking proceeding, denying the petition, or taking other appropriate action.

[57 FR 33268, July 28, 1992, as amended at 63 FR 13116, Mar. 18, 1998]

§2610.109 Awards against other agencies.

If an applicant is entitled to an award because it prevails over another agency of the United States that participates in a proceeding before the Office of Government Ethics and takes a position that is not substantially justified, the award or an appropriate portion of the award shall be made against that agency.

Subpart B—Information Required From Applicants

§2610.201 Contents of application.

(a) An application for an award of fees and expenses under the Act shall identify the applicant and the proceeding for which an award is sought. Unless the applicant is an individual, the application shall further state the number of employees of the applicant and describe briefly the type and purpose of its organization or business. The application shall also:

(1) Show that the applicant has prevailed and identify the position of the Office in the proceeding that the applicant alleges was not substantially justified; or

(2) Show that the demand by the Office in the proceeding was substantially in excess of, and was unreasonable when compared with, the decision in the proceeding.

(b) The application shall also include, for purposes of §2610.106 (a) or (b), a statement that the applicant's net worth does not exceed \$2,000,000 (for individuals) or \$7,000,000 (for all other applicants, including their affiliates) or alternatively, for purposes of §2610.106(b) only, a declaration that the applicant is a small entity as defined in 5 U.S.C. 601. However, an applicant may omit the statement concerning its net worth if:

(1) It attaches a copy of a ruling by the Internal Revenue Service that it qualifies as an organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) or, in the case of a tax-exempt organization not required to obtain a ruling from the Internal Revenue Service on its exempt status, a statement that describes the basis for the applicant's belief that it qualifies under such section; or

(2) It states that it is a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)).

(c) The application shall state the amount of fees and expenses for which an award is sought.

(d) The application may also include any other matters that the applicant wishes the Office to consider in determining whether and in what amount an award should be made.

(e) The application shall be signed by the applicant or an authorized officer or attorney of the applicant. It shall also contain or be accompanied by a written verification made by the applicant or authorized officer or attorney of the applicant under oath or under penalty of perjury that the information provided in the application is true and correct.

(f) These collections of information are not subject to Office of Management and Budget review under the Paperwork Reduction Act (44 U.S.C. chapter 35) because they are expected to involve nine or fewer persons each year.

[57 FR 33268, July 28, 1992, as amended at 59 FR 34755, July 7, 1994; 63 FR 13116, Mar. 18, 1998]